

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CALVERT LEE MASSEY,

Defendant-Appellant.

---

UNPUBLISHED

April 12, 2007

No. 267115

Genesee Circuit Court

LC No. 04-014844-FC

Before: Wilder, P.J., and Sawyer and Davis, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of premeditated first-degree murder, MCL 750.316. The trial court sentenced him to life in prison without parole. We affirm.

The victim died as a result of ligature strangulation between the evening of April 30, 2004, and the afternoon of May 1, 2004. She was hung by the neck from a rope in her bedroom closet. Her body was discovered naked from the waist down with her hands handcuffed behind her back, and there were several burns on her body. There were also bleach stains on her shirt, her skin, and the carpet beneath her. The rope was tied in an unusual and secure manner, and the pathologist testified that the bruising on her wrists and neck indicated that she had been bound and strangled before being hung. Black fibers were found on the handcuffs.

Defendant was interviewed by police, and he denied possessing any handcuffs or fur sleeves. However, black fur handcuff sleeves were found in his bedroom, and the fibers from those sleeves matched the fibers taken from the handcuffs used to bind the victim. Furthermore, defendant's former girlfriend, Christle Gore, testified that while she had resided with defendant, he showed her a bag containing handcuffs covered in black fur and pictures of his former wife, Iris Massey, wearing the handcuffs. Defendant admitted to residing in the same apartment complex as the victim but claimed that he only knew the victim by sight and that he did not know in which apartment she lived. Evidence also established that Gore, resided with the victim for a short period of time immediately before the murder and after Gore had separated from defendant. Several witnesses testified that defendant "stalked" Gore while she lived with the victim. Defendant admitted that he knew the victim had been hung and handcuffed, although the police had not told him about the handcuffs or released that information to the public. Defendant was observed to have a scratch on his stomach and bleach stains on his clothing.

At trial, the prosecutor moved to admit evidence that defendant killed Iris in 1999. The trial court admitted the evidence over defendant's objection. Forensics experts testified that Iris died as a result of ligature strangulation. Iris's body was found in a dumpster, wrapped in a comforter, with an extension cord tied around her neck. According to several witnesses, Iris died shortly after she separated from defendant. Defendant's daughter testified that, on the day of Iris's death, she observed defendant slap Iris across the face, drag her by the leg into their garage, and then throw a blanket filled with trash into a dumpster. When his daughter asked what happened to her mother, defendant replied that "a monster killed her." Before Iris's death, defendant was jealous of her relationship with another man, and when relatives asked why he killed her, he said, "I'm sorry. She had hickies on her neck."

Defendant first argues that the evidence presented at trial was insufficient to convict him of premeditated first-degree murder. We review sufficiency of the evidence claims de novo, determining whether the evidence, viewed in the light most favorable to the prosecution, warrants a rational trier of fact in finding that all the elements of the charged crime have been proved beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). Viewed in this light, the evidence presented at trial was sufficient to sustain defendant's conviction.

To establish first-degree murder, under MCL 750.316, the prosecutor must show that a defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. *People v Saunders*, 189 Mich App 494, 496; 473 NW2d 755 (1991). Defendant's theory of the case, both at trial and now on appeal, is that he had nothing to do with the killing and that the evidence is insufficient to identify him as the killer.<sup>1</sup> Circumstantial evidence, and reasonable inferences drawn therefrom, may be sufficient to prove an element of a crime, including identity. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993); *People v Schultz*, 246 Mich App 695, 702; 635 NW2d 491 (2001). We find sufficient evidence to identify defendant as the killer.

Defendant admitted that he was in the victim's apartment complex at the most likely time of the killing, there was evidence that he had "stalked" Gore while Gore resided with the victim, and defendant approached Gore just outside the victim's apartment building the day before the killing. Mere presence at the scene and time of a crime does not establish commission, but this testimony is enough to reasonably infer that defendant could have committed the crime, and it may contribute to a finding of guilt. *People v Barrera*, 451 Mich 261, 295; 547 NW2d 280 (1996); *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002). Defendant denied ever possessing handcuffs or handcuff sleeves even after detectives found black fur handcuff

---

<sup>1</sup> Defendant does not directly contend that the killing was anything other than premeditated and deliberate. Although we therefore need not address that issue, we note that neither the brutal nature of a killing nor strangulation is alone sufficient to show premeditation, but evidence of strangulation may be indicative of a defendant's opportunity to reflect before completing the crime. *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999). Similarly, the existence of defensive wounds on the victim can be evidence of premeditation. *Id.* The manner of the victim's death indicates that her murder was intentional, premeditated, and deliberate. See *People v Bowman*, 254 Mich App 142, 151-152; 656 NW2d 835 (2002).

sleeves in his bedroom. Defendant referred to the victim being handcuffed, although the police did not tell him that fact, and there is no credible evidence that defendant could have learned it from any other source. Knowledge of the details of a crime may serve as incriminating evidence. *Bowman, supra* at 151. Physical evidence showed that the handcuff sleeves found in defendant's bedroom matched fibers found on the handcuffs used on the victim, and defendant's DNA matched the DNA found on the handcuffs and under the victim's fingernails. The bleach stains on defendant's clothes, although circumstantial, support the theory that he was responsible for pouring bleach on the victim.

Additionally, evidence regarding Iris's murder was relevant to establishing defendant's identity as the killer. Like the victim in the instant case, Iris died as a result of ligature strangulation. Both victims had a cord or rope tied around their necks in the same secure and unusual manner. Defendant left his DNA on physical evidence found on both of the victims' bodies. The similarities in the two murders certainly tend to prove defendant's identity as the perpetrator. See generally *People v Golochowicz*, 413 Mich 298; 319 NW2d 518 (1982). In sum, the evidence established that defendant had the opportunity to kill the victim, that he possessed special knowledge of the details of the crime, that he left his DNA at the scene of the crime, and that he likely killed his wife in a similar manner. We find that there was sufficient evidence, viewed in its entirety, for a rational juror to find defendant guilty of premeditated first-degree murder beyond a reasonable doubt.

Defendant next argues that the trial court abused its discretion when it admitted evidence that defendant previously murdered his wife, Iris. We disagree.

We review a trial court's decision to admit evidence for a clear abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998); *People v McGhee*, 268 Mich App 600, 609; 709 NW2d 595 (2005). The abuse of discretion standard acknowledges that there are circumstances in which there is no one correct outcome. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). If the trial court's decision results in an outcome within the range of principled outcomes, it has not abused its discretion. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). Other-acts evidence may not be admitted under MRE 404(b) to show criminal propensity, but it may be admissible for other purposes. *People v Ackerman*, 257 Mich App 434, 439-440; 669 NW2d 818 (2003). There are four factors that must be met for other-acts evidence to be admissible.

First, there must be "substantial evidence" that the defendant actually committed the other act; however, the defendant need not actually be convicted of it. *Golochowicz, supra* at 309-310; *People v Sabin (After Remand)*, 463 Mich 43, 66; 614 NW2d 888 (2000). The prosecution need only provide evidence sufficient to "convince the jury of the probability of the defendant's actions." *People v Duncan*, 402 Mich 1, 13; 260 NW2d 58 (1977). Second, the circumstances and manners of both offenses must be sufficiently similar, or must otherwise be sufficiently related, that they may be regarded as "the handiwork of the same person." *Golochowicz, supra* at 310-312.

Iris's body was found wrapped in a blanket bearing defendant's DNA, in a dumpster. Paint chips found on Iris's body matched the paint in defendant's garage. On the day of Iris's death, defendant's daughter observed defendant hit Iris, drag Iris into the garage, and put a bundled blanket into a dumpster. Like the victim in this case, Iris died as a result of ligature

strangulation. Iris died shortly after separating from defendant. Before Iris's death, defendant was jealous of her relationship with another man, and when relatives asked why he killed her, he said, "I'm sorry. She had hickies on her neck." Both victims had either a cord or rope tied around their necks in the same secure and unusual manner, and both bore DNA evidence matching defendant. In this case it was the victim's friend, and roommate for a time, Gore who had recently separated from defendant, but defendant demonstrated similar possessive behaviors. We find that there is sufficient evidence that defendant killed Iris, and the two killings are sufficiently similar to be identifiable as the "handiwork of the same person."

The other-acts evidence must also be relevant to a matter at issue in determining the defendant's guilt, and, essentially restating MRE 403, the probative value of the evidence may not be substantially outweighed by danger of unfair prejudice to the defendant. *People v VanderVliet*, 444 Mich 52, 70-72; 508 NW2d 114 (1993). Defendant's theory of the case was that he was not the killer, so identity was particularly at issue. The striking similarities between the two killings tend to make it more likely that the perpetrator of one was also the perpetrator of the other, so we deem the evidence relevant to defendant's identity as the killer. Furthermore, although obviously damaging to defendant's position, the evidence was highly probative to an issue of central importance at trial. The trial court gave a cautionary instruction to the jury, which we presume the jury followed in the absence of any evidence to the contrary. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). The trial court did not abuse its discretion in finding the evidence relevant and not substantially outweighed by the danger of unfair prejudice.

Defendant finally argues that the prosecutor committed misconduct by stating in her opening statement that defendant strangled Iris, even though he had not yet been convicted of doing so. We disagree.

We review unpreserved claims of prosecutorial misconduct for plain error affecting the defendant's substantial rights. *Ackerman, supra* at 448. The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). Prosecutorial comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial. *People v Brown*, 267 Mich App 141, 152; 703 NW2d 230 (2005). A prosecutor may not make a statement of fact to the jury which is unsupported by the evidence, but the prosecutor may argue the evidence and all reasonable inferences arising from it. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995); *Ackerman, supra* at 450. As discussed, the trial court properly admitted evidence of Iris's murder, finding that there was substantial proof that defendant actually committed the murder. Therefore, defendant's identity as Iris's killer could reasonably be inferred from the facts in evidence, and the prosecutor's statement was proper. *Bahoda, supra* at 282. Moreover, the trial court cured any potential for error by instructing the jury, on more than one occasion, that the attorneys' statements and arguments were not evidence. Therefore, defendant cannot establish that the prosecutor's statement affected the outcome of the trial, so reversal is not required. *Ackerman, supra* at 449; *Watson, supra* at 586.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ David H. Sawyer  
/s/ Alton T. Davis